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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT SEATTLE

7 DAVID CHARLES SCHUBERT,

8 Petitioner,

9 v.

10 KENNETH QUINN,

11 Respondent.  
12

No. C08-0660RSL

ORDER GRANTING IN PART  
CERTIFICATE OF APPEALABILITY

13 This matter comes before the Court on petitioner's "Motion for Certificate of  
14 Appealability." Dkt. # 18. Because petitioner filed his notice of appeal after April 24, 1996, his  
15 appeal is governed by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"),  
16 which worked substantial changes to the law of habeas corpus. Under the amended version of  
17 28 U.S.C. § 2253(c), a petitioner may not appeal the denial of a habeas corpus petition unless the  
18 district court or the Ninth Circuit issues a certificate of appealability identifying the particular  
19 issues that may be pursued on appeal. United States v. Asrar, 116 F.3d 1268 (9th Cir. 1997).

20 To obtain a certificate of appealability, the petitioner must make a substantial  
21 showing of the denial of a constitutional right. "Obviously the petitioner need not show that he  
22 should prevail on the merits. He has already failed in that endeavor." Barefoot v. Estelle, 463  
23 U.S. 880, 893 n.4 (1983). Rather, he must demonstrate that the resolution of the habeas petition  
24 is debatable among reasonable jurists or that the issues presented were "adequate to deserve  
25 encouragement to proceed further." Slack v. McDaniel, 529 U.S. 473, 483-84 (2000). Where a  
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1 petition is dismissed on procedural grounds, the Court must determine whether “jurists of  
2 reason” would debate (1) whether the petition states a valid claim of the denial of a  
3 constitutional right and (2) whether the district court’s procedural ruling was correct. Slack, 529  
4 U.S. at 484.

5           Having reviewed the record in this case, including the Report and  
6 Recommendation of the Honorable James P. Donohue, United States Magistrate Judge, the  
7 Court finds that the dismissal of petitioner’s second, third, fourth, fifth, seventh, eighth, and  
8 ninth grounds for relief as procedurally barred is debatable among reasonable jurists and that  
9 these claims deserve to proceed further. These claims are, therefore, appealable under AEDPA.  
10 The Court’s findings regarding petitioner’s other grounds for review, namely the alleged speedy  
11 trial violation (ground one), the ineffective assistance of counsel claim (ground six), and the  
12 alleged insufficiency of the evidence to support the second degree murder conviction (ground  
13 ten), are not debatable and should not be the subject of an appeal.

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15           Dated this 1st day of June, 2009.

16           Robert S. Lasnik

17           Robert S. Lasnik

18           United States District Judge  
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